

movement of other attachments as part of a primary modification, the modification cost will be covered by the initiating or requesting party.⁷

Neither Section 224(i) nor the FCC's rules were found to be unconstitutional or inapplicable as part of the analysis in the *Alabama Power* decision. Accordingly Gulf Power is prohibited from recovering *any* additional costs from existing attachers (*e.g.*, more than the marginal costs and rent paid by existing attachers) when a pole is modified or replaced to accommodate someone else's attachment. The questions as to identifying which poles Gulf Power changed out for Complainants, third parties, or itself, whether Gulf Power was reimbursed for such change-outs, and whether any such change-outs were actually performed "for the specific benefit of" Complainants are relevant, and the willful failure to answer merits dismissal.

Moreover, in Interrogatory No. 30, Complainants even asked point blank for the identification of "every instance in which Gulf Power has change-out a pole containing one or more of Complainants' attachments at Gulf Power's own expense (*i.e.*, un-reimbursed) as a result of a need to accommodate an electric transformer or other Gulf Power equipment or facility." Exhibit D, 17. But again, Gulf Power couldn't provide a single instance. Instead, it merely said:

It is not possible to identify each such instance, but Gulf Power changes-out poles at its own expense almost everyday in the field. If Gulf Power sees a pole that needs to be changed-out to serve a customer, Gulf Power changes-out the pole and serves its customer as fast as possible.

Exhibit D, 17. Gulf Power's refusal to provide specifics and its statement that "it is not possible" to do so is telling – either it never had any such evidence or it now thinks that it what it thought it had is in fact "irrelevant." The few documents produced by Gulf Power that pertain to

⁷ *In the Matter of Implementation of the Local Competition Provisions in the Telecommunications Act of 1996*, 11 F.C.C.R. 15,499, ¶ 1211 (1996), *aff'd in part and vacated in part*, *Iowa Utilities Bd. v. F.C.C.*, 120 F.3d 753, *aff'd in part and reversed in part*, *AT & T Corp. v. Iowa Utilities Bd.*, 525 U.S. 366 (1999).

make-ready show that [MATERIAL REDACTED PURSUANT TO THE STIPULATION AND AGREED CONFIDENTIALITY ORDER OF FEBRUARY 10, 2005].⁸ Either way, Gulf Power has shown that it has gamed the system. Accordingly, these proceedings should immediately be dismissed with prejudice.

IV. Finally, Gulf Power's Claim Should Be Dismissed Because Its Discovery Responses Make Clear That It Has No Evidence of Utility Pole Capacities, "Higher Valued Uses," Or Lost Opportunities At The Relevant Times of The Alleged "Taking"

To the extent Gulf Power claims it can satisfy the *Alabama Power* test for obtaining more than marginal costs, it must produce evidence of its pole capacities at the time of the alleged taking. Gulf Power claims a taking occurred by virtue of 47 U.S.C. § 224(f). Section 224(f) became effective in 1996. But Gulf Power did not purport to terminate the then-existing, negotiated, pole attachment contracts it had with Complainants until July 2000. *See* Complainants' Complaint in PA No. 00-004 (July 10, 2000). Accordingly, even assuming that Gulf Power's notices of termination issued in mid-2000 were valid, Complainants cannot be said to have relied upon section 224(f) until July of 2000. If there were a *per se* taking of a portion of Gulf Power's poles, it happened at that time, and accordingly any determination of an entitlement to more than marginal costs must be supported by proof of a loss to Gulf Power, and quantification of that loss, as of mid-2000, the date of the alleged uncompensated taking. *See generally United States v. Clarke*, 445 U.S. 253 (1980) ("value of property taken by a governmental body is to be ascertained as of the date of taking" and "[w]hen a taking occurs by physical invasion, . . . the usual rule is that the time of the invasion constitutes the act of taking"); *see also Palazzolo v. Rhode Island*, 533 U.S. 606 (2001) ("the amount of the award is measured by the value of the property at the time of taking, not the value at some later date");

⁸ *See, e.g.*, Gulf Power documents Nos. 2310-2404, attached as Exhibit B.

Danforth v. United States, 308 U.S. 271 (1939)(“just compensation is value at the time of the taking” and this rule applies when a taking has “occurred previously in actuality or by a statutory provision”).

However, Gulf Power’s answers to Complainants’ Interrogatories show that it has no evidence sufficient to meet the *Alabama Power* requirements for demonstrating an entitlement to compensation greater than the utility’s marginal costs as of July 2000 or even approximately as of that time. For example, as discussed above,⁹ when Complainants’ asked in Interrogatory No. 3 for identification of poles that Gulf Power contends were at “full capacity,” Gulf Power did not answer and instead responded only that it would, in the future, provide an answer identifying poles it deems to be “crowded” based upon the examination of poles by its contractor, Osmose, done this year. Exhibit D, 4. This answer, which does not even address “full capacity,” relies upon a physical inspection done some five years *after* the alleged taking and could not support any finding that, as a factual matter, any specific pole was “full” at an earlier time. Such evidence clearly does not comport with the established legal rule that, in a constitutionally based “takings” claim, the value of the property alleged to have been taken must be ascertained as of the date of the taking. Indeed, as set forth previously, the vast majority of documents showing permits for new attachments made after 2000 (but not indicating which specific pole or who the existing attachers were) were accompanied by entries indicating that [MATERIAL REDACTED PURSUANT TO THE STIPULATION AND AGREED CONFIDENTIALITY ORDER OF FEBRUARY 10, 2005].¹⁰ Accordingly, even Gulf Power’s own documents refute any claim that, as of the date that is relevant here, any pole was “full.”

⁹ See, *supra*, pp. 7-9.

¹⁰ See note 8, *supra*.

This principle of constitutional law – requiring evidence of the value taken at the time of the claimed taking – clearly makes sense in the context of pole attachments, where, during the space of the last five years, numerous additional pole attachments may have been made, and many external events affecting pole capacity, including such things as government safety measures and even pole strengthening and replacements related to hurricanes, may have altered utility pole capacity. Gulf Power cannot meet the required test as to time on any of the key points in this proceeding. Not only is Gulf Power unable to provide an answer as to its individual poles’ capacities as of the middle of the year 2000; it is also unable to provide any answer that would identify a “higher valued use” or an actual loss or quantifiable lost opportunity that it had as of the date of the alleged taking. *See* Gulf Power’s answers to Interrogatory Nos. 4, 5, and 9, Exhibit D, 4-7.

In sum, Gulf Power’s utter failure to produce evidence of the condition of the pole space it claims to have been taken as of the year 2000 and of any actual loss that it incurred as a result as of that date means that this proceeding should be dismissed.

CONCLUSION

Gulf Power has shown (1) that it cannot meet the “full capacity” and “higher valued use” standards set forth in *Alabama Power*; (2) that it cannot identify any actual, out-of-pocket loss or specific, quantifiable “lost opportunity” caused by Complainants’ attachments; (3) that it cannot, or will not, produce much of the evidence upon which it relied in its Description of Evidence; and (4) that it has no evidence of the value of any property “taken” as of the time of the alleged “taking.” For these reasons, Complainants respectfully submit that these proceedings should be dismissed with prejudice.

Respectfully submitted,



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PANAMA CITY, INC., MEDIACOM SOUTHEAST,
L.L.C., and BRIGHT HOUSE NETWORKS, L.L.C.**

Michael A. Gross

Vice President,

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FLORIDA CABLE

TELECOMMUNICATIONS ASS'N, INC.

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(850) 681-1990

August 1, 2005

Exhibit A

CONFIDENTIAL MATERIALS – REDACTED

**Pursuant to Protective Conditions in EB Docket No. 04-381
Before the Federal Communications Commission**

Exhibit B

**CONFIDENTIAL MATERIALS –
REDACTED**

**Pursuant to Protective Conditions in EB Docket No. 04-381
Before the Federal Communications Commission**

Exhibit C

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

December 9, 2003

VIA FACSIMILE AND U.S. MAIL

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Re: *Florida Cable Telecommunication Ass'n Inc. v. Gulf Power Co.*,
File No. PA 00-004

Dear Counsel:

This letter memorializes the rulings made in the above-captioned matter during a telephone conference on December 8, 2003. Pursuant to 47 C.F.R. § 1.106(k)(1) and (2), the Enforcement Bureau grants in part the Petition for Reconsideration that Gulf Power Company ("Gulf Power") filed on June 23, 2003.¹ Specifically, the Bureau orders further proceedings as detailed in this letter ruling, and otherwise defers ruling on the merits of the Petition for Reconsideration pending completion of those proceedings. See 47 C.F.R. § 1.106(k)(1) and (2).

By the close of business on December 29, 2003, Gulf Power will file and serve a submission describing with particularity the evidence it wishes to proffer in an effort to satisfy the standard articulated by the United States Court of Appeals for the Eleventh Circuit relating to "compensation above marginal cost." See *Alabama Power Co. v. FCC*, 311 F.3d 1357, 1370-71 (11th Cir. 2002), *cert. denied*, 124 S. Ct. 50 (2003). Gulf Power's submission further should explain, with respect to each category of evidence, the pertinence of that information to the Eleventh Circuit's standard. By the close of business on January 19, 2004, Florida Cable Telecommunications Association will file and serve a response to Gulf Power's submission.

This letter ruling is issued pursuant to sections 4(i), 4(j), and 224 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 224, section 1.106 of the Commission's

¹ See Gulf Power Company's Petition for Reconsideration and Request for Evidentiary Hearing, File No. PA 00-004 (filed June 23, 2003) ("Petition for Reconsideration").

rules, 47 C.F.R. § 1.106, and the authority delegated in sections 0.111 and 0.311 of the Commission's rules, 47 C.F.R. §§ 0.111, 0.311.

Sincerely,



Lisa B. Griffin
Deputy Chief, MDRD
Enforcement Bureau
lisa.griffin@fcc.gov

Exhibit D

**Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

FLORIDA CABLE
TELECOMMUNICATIONS ASSOCIATION,
INC., COX COMMUNICATIONS GULF
COAST, L.L.C., et. al.

Complainants,

v.

GULF POWER COMPANY,

Respondent.

E.B. Docket No. 04-381

To: Office of the Secretary

Attn.: The Honorable Richard L. Sippel
Chief Administrative Law Judge

**GULF POWER'S RESPONSES TO COMPLAINANTS'
FIRST SET OF INTERROGATORIES TO RESPONDENT**

Gulf Power Company ("Gulf Power") responds to Complainants' First Set of Interrogatories as follows:

GENERAL RESPONSES AND OBJECTIONS

1. Gulf Power object to each and every interrogatory to the extent it seeks information protected by the attorney-client privilege or work-product doctrine.
2. Gulf Power objects to the interrogatories, generally, in that they far exceed the discovery limitations imposed by the Presiding Judge's December 17, 2004 Order ("not to exceed 50 without subparts").
3. Gulf Power objects to each and every interrogatory to the extent complainants' purpose in propounding such interrogatory is to subject Gulf Power to annoyance, expense, embarrassment, or oppression.
4. By responding to any particular interrogatory, Gulf Power does not waive its objections.

5. Gulf Power reserves the right the supplement and/or amend these responses and objections. In particular, a number of Gulf Power's responses will require supplementation after completion of the audit being performed by Osmose Utilities Services, Inc. ("Osmose").

SPECIFIC RESPONSES AND OBJECTIONS

1. Identify the total annual number of Gulf Power poles, for each year from 2000 through the present, on which you contend that cable operator Complainants have been attached, and identify the specific annual number of pole attachments for each cable operator Complainants for each year during this period of time.

RESPONSE:

	2000	*2001	2002	2003	2004	2005
Cox Communications Gulf Coast, L.L.C.	61,655	64,862	65,107	65,715	66,169	66,727
Comcast Cablevision of Panama City, Inc.	13,392	14,597	14,597	14,659	14,728	14,824
Comcast JOIN Holding, Inc.	7,060	7,679	7,679	7,679	7,679	7,679
Mediacom Southeast, L.L.C.	11,622	14,054	14,054	14,266	14,519	17,059
*Bright House Networks, L.L.C.						
Time Warner Entertainment Company L.P. (Chipley)	4,905	5,241	5,356	5,356	5,404	5,404
Time Warner Entertainment-Advance/Newhouse (Cantonment)	8,435	8,807	8,807	8,948	8,959	8,991

* Time Warner became Bright House Networks, L.L.C. January 2003.

** Numbers are from the 2001 Joint (Bellsouth and CATV companies) Pole Count.

2. Identify your definition or understanding of the phrase "full capacity" within the meaning of the Alabama Power v. FCC standard, and identify and define any differences between your use or understanding of "full capacity" and the terms "crowded" or "lack of capacity." In addition, identify with specificity the basis upon which you propose to quantify or measure "full capacity" for an individual pole. Provide any applicable citation to safety codes, specifications, agreements or economic or regulatory literature that supports your response.

RESPONSE: Gulf Power understands the phrase "full capacity" (as used in APCo v. FCC) to mean a pole that cannot host further communications attachments, consistent with Gulf Power's own core use, the NESC, existing contractual obligation, and sound engineering practice, without expansion or addition of facilities (including cross-arms, guy wires, etc.). Gulf Power understands the term "crowded" to mean a pole that is close to being at "full capacity" – in other words, a pole with room for only one additional communications attachment. For the purposes of this

proceeding only, Gulf Power proposes to measure the visually identifiable, physical "crowding" or "full capacity" as set forth in the Osmose Statement of Work.

The safety code provisions and specifications which support this definition of "crowding" or "full capacity" include the following:

- a. Vertical clearance between the bottom of electric utility transformers (30") and telecommunication/CATV cable attachment.
[NESC, Rule 238 Table 238-1 page 148 in the code].
- b. Vertical clearance between electric utility transformer bus conductors (40") and telecommunication/CATV cable attachment.
[NESC, Rule 235C1 Table 235-5 page 126, 131].
- c. Vertical clearance between electric utility neutral conductor (40") and telecommunication/CATV cable attachment.
[NESC, Rule 235C1 Table 235-5 page 126, 131].
- d. Vertical clearance between electric utility riser (40") and telecommunication/CATV cable attachment.
[NESC, Rule 235C1 Table 235-5 page 126, 131].
- e. Vertical clearance between electric utility outdoor lighting (12") and telecommunication/CATV cable attachment.
[NESC, Rule 238D page 147].
- f. Vertical clearance between electric utility mid-span spacing (30") and telecommunication/CATV cable attachments.
[NESC Rule 235C1 or 235C2 (depending on which supply conductor) for neutral TPX use 235C1 exception 3 for svc drops. For midspan neutrals use 235C2b1a this implies 12" is OK midspan as long as 30" is maintained at the structures].
- g. Vertical clearance between telecommunication/CATV mid-span spacing (4") and other telecommunication/CATV cable attachments.
[NESC Rule 235H].
- h. Telecommunication/CATV cable attachments clearances over roads (15.5' and over DOT roads 18') and pedestrian accessible areas (9.5").
[NESC Rule 232B1 Table 232-1 page 72, 78].
- i. Attachers with vertical ground on poles must bond to electric utility ground.
[NESC Rule 097G page 26].

- j. Attachers down guys on Gulf Powers poles must have less than (4') separation between their down guys and ours.
[Gulf Power requirement via spec plates].

The "agreements" which support this definition of "crowding" or "full capacity" include Gulf Power's joint use agreements with BellSouth, Sprint and GTC. (See Bates labeled documents Gulf Power 2098 through 2148).

3. For the pole attachments identified in response to Interrogatory No. 1, identify, for each cable operator Complainant for the period from 2000 through the present: the total number of Gulf Power poles that you contend were, are, or have been at "full capacity" within the meaning of the Alabama Power v. FCC standard;" the location and individual pole number of the specific poles you contend were, are, or have been at "full capacity;" the specific period of time you contend the poles you identified were, are, or have been at "full capacity;" and the specific reason or reasons why you contend such poles were, are, or have been at "full capacity."

RESPONSE: Gulf Power contends that all poles identified in response to interrogatory number 1, at all times since 2000, were either "crowded" or at "full capacity." For the purposes of this proceeding, Gulf Power has contracted with Osmose to perform an audit of its poles to ascertain crowding band on vertical clearances. Following completion of the audit, Gulf Power will supplement this response to identify those poles meeting the definition of "crowded" as used in the Osmose Statement of Work.

4. For the poles identified in response to Interrogatory No. 3 which you contend were, are, or have been at "full capacity," identify, for each year from 2000 through the present and for each cable operator Complainant, the number of such poles for which you contend that Gulf Power had or has "waiting in the wings" "another buyer of the space" occupied by Complainants' attachments or some other space on Gulf Power poles; identify all such "buyers;" identify the period of time when they were, are, or have been "waiting in the wings" and explain Gulf Power's understanding of the term "waiting in the wings;" identify what rate or compensation such other buyer was, is, or has been ready, willing, and able to pay to Gulf Power for access to the space occupied by Complainants' attachments or some other space on Gulf Power poles; identify whether such other buys has obtained an attachment to Gulf Power poles and, if so, how such attachment was accomplished; and whether the pole you assert was at "full capacity" was or was not replaced or substituted and the reasons therefore.

RESPONSE: Gulf Power understands the phrase "waiting in the wings" (as used in APCo v. FCC) to be figurative, insofar as requiring identification of an actual buyer would completely reject the hypothetical "willing buyer" standard and thus be at odds

with more than 100 years of United States Supreme Court jurisprudence. In each instance where Gulf Power has changed-out a pole for capacity reasons to accommodate a new attacher, a "buyer" had been "waiting in the wings" for space on a "crowded" or "full capacity" pole. Sometimes those buyers have been ready, willing and able to pay the Cable Rate; sometimes the Telecom Rate; and sometimes a market rate. The most prominent instance of such occurrence is in the context of major build-outs. (See Gulf Power's January 8, 2004 Description of Evidence).

5. For the poles identified in response to Interrogatory No. 3 which you contend were, are, or have been at "full capacity" and for which you have not had "another buyer of the space" "waiting in the wings" as specified in response to Interrogatory No. 4, identify, for each year from 2000 through the present, and for each cable operator Complainant, all poles, by total number, and individual pole number and location, for which you contend Gulf Power was, is, or has been willing, during the period from 2000 through the present, to put the space occupied by Complainants to a "higher valued use with its own operations;" identify what that "higher value used" was, is, or has been; identify how and why such use is of a "higher value" than the make-ready and annual per-pole compensation received by Gulf Power from Complainants; and quantify the difference between the make-ready and annual per-pole compensation paid by Complainants to Gulf Power and the "higher value" that you claim. Provide any applicable citation to economic or regulatory literature that supports your response.

RESPONSE: Gulf Power objects to the first half of the question on the grounds that it is vague, ambiguous, and impossible to understand. Subject to and without waiving this objection, Gulf Power believes that any space occupied by a cable company can be put to a "higher valued use." The space can be reserved for sale to players in the burgeoning Telecom market; the space can be reserved for non-regulated communications attachers; the space can be used for Gulf Power's own communications use (or that of its affiliates). From Gulf Power's perspective, merely forcing the cable companies to develop their own infrastructure, rather than freeload on Gulf Power's facilities, is itself a "higher valued use." This is especially true in light of the Enforcement Bureau's trend towards operational micro-management and evisceration of conventional commercial contract protections (See, e.g., CTAG).

6. For all of the poles that you identified in response to Interrogatories 4 and 5, identify, for each year from 2000 through the present, the annual per-pole compensation received by Gulf Power from each cable operator Complainant.

RESPONSE:

	2000	2001	2002	2003	2004	2005
Cox Communications Gulf Coast, L.L.C.	\$6.20	\$6.20	\$6.20	\$6.20	\$6.20	\$6.20
Comcast Cablevision of Panama City, Inc.	\$5.65	\$5.65	\$5.65	\$5.65	\$5.65	\$5.65
Comcast JOIN Holding, Inc.	\$6.25	\$6.25	\$6.25	\$6.25	\$6.25	\$6.25
Mediacom Southeast, L.L.C.	\$5.98	\$5.98	\$5.98	\$5.98	\$5.98	\$5.98
Bright House Networks, L.L.C.						
Time Warner Entertainment Company L.P. (Chipley)	\$6.30	\$6.30	\$6.30	\$6.30	\$6.30	\$6.30
Time Warner Entertainment-Advance/Newhouse (Cantonment)	\$6.30	\$6.30	\$6.30	\$6.30	\$6.30	\$6.30

7. For all of the poles that you identified in response to Interrogatories 4 and 5, identify the marginal costs to Gulf Power of each of cable operator Complainants' attachments for which you claim a right to compensation at a rate greater than that under the FCC formula plus make-ready.

RESPONSE: Gulf Power contends that its marginal costs for each CATV attachment are equal to what the cable formula (plus a charge for grounds and arrestors) yields.

8. For all of the poles that you identified in response to Interrogatories 4 and 5, identify every attaching entity other than Complainants attached to each such pole; describe how many attachments on each such pole those other attaching entities have had or have, when such attachments commenced, and where those attachments are located on each pole; and state the make-ready and annual per-pole compensation received by Gulf Power from each attaching entity other than Complainants (including any Gulf Power affiliates). Specifically identify the number of attaching entities paying Gulf Power annual compensation under the FCC's telecommunications rate formula (47 U.S.C. § 224(e) and implementing regulations).

RESPONSE: Gulf Power will supplement this response upon completion of the Osmose audit.

9. Identify, quantify, and explain the basis of any actual loss (income or other revenue) that Gulf Power contends that it has experienced from 2000 to the present, which it alleges was caused by attachments of cable operator Complainants (and explain in your answer how the alleged actual losses are or will be proved, including any reliance upon Gulf Power's specifications, accounting records, engineering documents, or testimony).

RESPONSE: From 2000 to the present, Gulf Power's actual loss is measured by the difference between the rate paid by complainants and just compensation, plus interest at the

maximum allowable legal rate. Gulf Power is not claiming as damages any actual loss other than the difference in rates, plus interest.

10. For all of the poles that you identified in response to Interrogatories 4 and 5, identify the precise rate (i.e., in dollars and cents) that you contend constitutes a "just compensation" annual pole attachment rental rate for Complainants' attachments and specify the poles, by number and location, for which you are seeking that rate and the basis and method of calculating that rate.

RESPONSE: Gulf Power contends, and has contended since 2000, that \$40.60 is the annual just compensation rate. Gulf Power is considering seeking other alternative rates based on the calculations of its valuation experts. Gulf Power expects each of these alternative rates to be less than \$40.60. Gulf Power will identify the precise and methodology upon disclosure of its valuation experts according the December 17, 2004 Order. Gulf Power will identify the specific poles for which it seeks a higher rate after completion of the Osmose audit.

11. Identify all persons, whether or not employed by Gulf Power, who have knowledge or information referring to, relating to, or regarding Gulf Power's factual and legal contentions in FCC Docket Numbers: P.A. No. 00-004 or E.B. No. 04-381, including Gulf Power's contentions in its January 2004 "Description of Evidence" and its December 2004 "Preliminary Statement on Alternative Cost Methodology."

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it is overly broad and unduly burdensome. Subject to and without waiving these objections, Gulf Power list the following:

	Name	Employment
1.	Ben Bowen	Gulf Power Co.
2.	Andy McQuagge	Gulf Power Co.
3.	Doug Stuckey	Gulf Power Co.
4.	Terry Davis	Gulf Power Co.
5.	Tom Park	Southern Company
6.	Tommy Forbes	Gulf Power Co.
7.	Representative of Opposing Parties	
8.	Mike Dunn	GPC, Retired
9.	Robert Calhoun	Knology
10.	Bret McCants	Knology
11.	Wayne Singleton	Knology
12.	Rex Brooks	Gulf Power Co., Retired
13.	Mike Dunn	Gulf Power Co., retired

This list excludes counsel for Gulf Power and other parties. This list also excludes Gulf Power's experts and the personnel of its pole audit contractor.

12. Identify all persons who provided assistance or information used in answering these interrogatories and list the corresponding interrogatory numbers for which they provided the assistance or information.

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it is unduly burdensome and vague. Subject to and without waiving these objections, Gulf Power lists the following:

	Name	Employment	Misc.
1.	Ben Bowen	Gulf Power Co.	
2.	Andy McQuagge	Gulf Power Co.	
3.	Doug Stuckey	Gulf Power Co.	
4.	Rex Brooks	Gulf Power Co., Retired	
5.	Keith L. Reese, PE	Georgia Power Co.	NESC expert
6.	Terry Davis	Gulf Power Co.	
7.	Tom Park	Southern Company	

13. Identify each individual whom you may call as a witness at any hearing in this Action, or who may provide written testimony, and state the subject matter on which each witness is expected to testify. If the witness is an expert witness, state the substance of the findings and the opinion(s) to which the witness is expected to testify, and the grounds and basis for each finding and opinion.

RESPONSE: Gulf Power will provide this information in accordance with the Presiding Judge's March 30, 2005 Order.

14. If you contend that Complainants, or any officer, director, agent, employee acting on behalf of Complainants, have made any admission, or taken or failed to take any action, that would preclude or tend to preclude Complainants from recovering under the claims they have submitted in this Action, identify and describe the substance of each such admission, action or omission, the person who made that admission or took or failed to take such action, and the person to whom such admission was made.

RESPONSE: Gulf Power does not understand complainants to be seeking recovery "under [any] claims they have submitted in this Action."

15. Identify and describe every communication, whether oral, written or otherwise, between you and any of your agents or employees, and any other person,

including, but not limited to, Complainants, other cable operators, other telecommunications carriers, or any other entity attached to poles owned or controlled by you, relating to annual pole rental charges or the performance of or payment for make-ready work from 1998 through to the present on poles owned or controlled by Gulf Power.

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it is overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence. Gulf Power further objects on the grounds that this interrogatory is intended for purposes annoyance or oppression.

16. Identify and describe all entities (including non-communications attachers) that are, or have been, attached to poles owned or controlled by Gulf Power since 1998.

RESPONSE:

Name	
1. Americable International, Inc.	
2. B&L Cable Communications, Inc.	
3. Knology Inc.	
4. CableSouth, Inc.	
5. Cablevision Systems, Inc.	
6. Comcast Cablevision Corp.	
7. Comcast Cablevision of Panama City, Inc.	
8. Comcast JOIN Holding, Inc.	
9. Community Cable Corp.	
10. Cox Communications Pensacola, Inc.	
11. Cox Communications Gulf Coast LLC	
12. Torrence Cablevision BSA	
13. Jones Intercable, Ltd.	
14. Springfield Cable Vision	
15. TCI Cablevision of Florida, Inc.	
16. TCI TCR of the Gulf Plains, Inc.	
17. Time Warner Entertainment Advance/Newhouse Partnership	
18. Time Warner Entertainment Company, L.P.	
19. Bright House Networks, LLC	
20. Emerald Coast Cablevision of Florida, Inc.	
21. Mediacom Southeast LLC	
22. Washington Cable TV, Inc.	
23. City of Valparaiso	
24. Campbellton Cable TV	
25. Peoples First Financial S & L	
26. Frangista Beach Inn	

27.	The Crest Corporation	
28.	R. E. Singletary, Inc.	
29.	Mallard Cablevision, LLC	
30.	DCA Services Division NAF Contracting	
31.	Walton County	
32.	Adelphia Business Solutions	
33.	KMC Telecom II, Inc.	
34.	Madison River Communications, LLC	
35.	Southern Light, LLC	
36.	Bellsouth Telecommunications, Inc.	
37.	Sprint Florida, Inc.	
38.	GTC, Inc.	
39.	Town of Cinco Bayou	
40.	City of Crestview	
41.	City of DeFuniak Springs	
42.	City of Ponce De Leon	
43.	City of Destin	
44.	City of Fort Walton Beach	
45.	City of Mary Esther	
46.	Town of Shalimar	
47.	City of Valparaiso	
48.	City of Bonifay	
49.	Town of Caryville	
50.	City of Chipley	
51.	City of Graceville	
52.	City of Lynn Haven	
53.	City of Panama City	
54.	City of Panama City Beach	
55.	City of Vernon	
56.	Town of Century	
57.	City of Gulf Breeze	
58.	City of Milton	
59.	Santa Rosa County	
60.	DOT	
61.	MCI Telecommunications	
62.	Bay County Traffic	
63.	Perdue Farms	
64.	Walton County	
65.	City of Pensacola	
66.	School District of Escambia County	
67.	Gulf Coast Building Products, Inc.	

17. Identify and describe any surveys, audits or pole counts conducted by Gulf Power, its agents or any other person from 1996 through the present. Please specify in

your answer the dates or time periods of these surveys, audits or pole counts, an explanation of their methodologies and all categories of information collected concerning attaching facilities and their ownership on the poles. In addition, please identify the names, titles and employers of all persons involved in the surveys, audits or pole counts.

RESPONSE: Gulf Power has conducted two pole counts from 1996 to the present day; they were done in 1996 and 2001. The 1996 count was done from approximately April 1, 1996 to November 2, 1996. The 2001 pole count was conducted from approximately February 5, 2001 to April 27, 2001.

Both pole counts were conducted with the same methodologies and collected the same information. Gulf Power, with the appropriate telephone company, conducted a total joint use pole count over Gulf Power's entire service territory. The pole counts were done with teams of one Gulf Power representative accompanied by one telephone company representative, either BellSouth or Sprint (The one exception to this system was in the 2001 count where BellSouth contracted Gulf Power to count the Bellsouth areas). Teams would count by Gulf Power grid maps in each of the telephone company's respective service areas that overlap Gulf Power's service area. Each team is tasked with the (a) location and ownership of all joint use poles on the map, (b) assigning a sequential number to each pole for identification and counting, (c) and lastly, to identify each CATV or telecom attacher, if any, that is on each joint use pole identified on the grid maps. This process was followed until all the grid maps were counted.

Reports would then be produced that would show (1) the number of Gulf Power attachments on telephone poles, (2) the number of telephone attachments on Gulf Power poles and, (3) the number and company name of all CATV and telecommunication attachments made to both Gulf Power poles and each telephone company.

Below is a list of names of persons that worked for Gulf Power on each of the two pole counts.

1996 Pole Count		
Name		
Alan Barton		
Ben Bowen		
Mark Serafin		
R. Payne		
Robert T. Sanders Sr.		
David Lee		
Rex Brooks		

2011 Pole Owners		
	Name	
1	Ben Bowen	
2	Rex Brooks	
3	Carolyn Sirmon	
4	Keith Johnson	
5	Dave Hill	
6	Pat Bolster	
7	Jason Poe	
8	Larry Arant	
9	Larry Little	
10	Steve Rhodes	
11	Curtis Brown	
12	Joe Marshall	
13	Stephanie Cobb	
14	Donnie Bell	
15	Brian Evans	
16	Raquel Morgan	
17	Kenny Barron	
18	Bill Weintritt	
19	Ernest Robinson	
20	Glenn Crutchfield	
21	Bruce Guernsey	
22	Bill Stinson	
23	Bill Cassenti	
24	Louis Dodd	

18. Identify the total number of poles owned or controlled by Gulf Power that utilize cross-arms, extension arms, or boxing arrangements and describe those arrangements, the parties who attachments use such arrangements, and the reasons for utilizing them.

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues.

19. Of the total number of poles owned or controlled by Gulf Power that utilize cross-arms, extension arms, or boxing arrangements, identify and describe those individual poles to which Complainants are attached that use such arrangements and the reasons for utilizing these arrangements.

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues.

20. Identify and describe, for each cable operator Complainants, the number of Gulf Power poles that have been changed out from 1998 to the present in order to accommodate attachments of Complainants, the location of any such change-outs, the reasons for each change-out, and identify any and each instance in which Gulf Power was not reimbursed by Complainants for the costs of such change-outs.

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues. To the extent the information sought is discoverable, it is the subject of other interrogatory responses and Gulf Power's responses to complainants' request for production.

21. Identify and describe the number of Gulf Power poles that have been changed-out on account of a communications attacher's request (other than Complainants) and the circumstances surrounding such replacement or substitution (i.e., specify the reason for the change-out and the party whose action or request necessitated it).

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues. To the extent the information sought is discoverable, it is the subject of other interrogatory responses and Gulf Power's responses to complainants' request for production.

22. Identify and describe the number of Gulf Power poles that have been changed-out on account of a non-communications attacher's request and the circumstances surrounding such change-out (i.e., specify the reason for the change-out and the party whose action or request necessitated it).

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues. To the extent the information sought is discoverable, it is the subject of other interrogatory responses and Gulf Power's responses to complainants' request for production.

23. Identify and describe the number of Gulf Power poles that have been changed-out on account of Gulf Power's core electricity service requirements and the circumstances surrounding such change-out (i.e., specify the reason for the change-out and the party whose action or request necessitated it).

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues. To the extent the information sought is discoverable, it is the subject of other interrogatory responses and Gulf Power's responses to complainants' request for production.

24. Identify and describe the occasions on which Gulf Power has refused to change-out a pole. Your response should include, but not be limited to, a description of the circumstances surrounding the refusal, the identification of the entity requesting the pole replacement, and an explanation of the reasons for Gulf Power's refusal and any alternate arrangement employed.

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues.

25. Describe and explain the steps and procedures involved in changing-out a pole, from a prospective attacher's request (or Gulf Power's own core electricity need) to completion (i.e., including processing, procurement, placement and transfer of existing facilities and equipment, including estimated time periods).

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues.

26. Identify all persons involved in developing Gulf Power's pole make-ready and change-out procedures, their titles and responsibilities, and a description of their roles in formulating the procedures, and identify the specific persons, whether or not employed by Gulf Power, that You rely upon to determine whether make-ready or a change-out is needed, or whether a Gulf Power pole is at "full capacity," "crowded," or has a "lack of capacity."

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it overly broad, not reasonably calculated to lead to the discovery of admissible evidence, and seeks information which is not relevant to the hearing issues.

27. Identify and describe the number, type, and size (in feet and diameter) of poles in Gulf Power's inventory annually between 1998 and the present.

RESPONSE: Gulf Power objects to this interrogatory on the grounds that it is vague and ambiguous. To the extent this interrogatory seeks information regarding Gulf